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IN THE

SUPREME COURT OF THE UNITED STATES

No. 12 Original.

STATE OF ARKANSAS, COMPLAINANT,

vs.

STATE OF TENNESSEE, DEFENDANT.

MOTION TO HAVE PRINCIPLES SETTLED FOR THE ASCERTAINMENT OF THE BOUNDARY LINE BETWEEN COMPLAINANT AND DEFENDANT AT THE PLACE MENTIONED IN THE COMPLAINANT'S BILL AND FOR THE APPOINTMENT OF A COMMISSION TO ASCERTAIN AND DESIGNATE AT SAID PLACE THE BOUNDARY LINE BEWEEN THE TWO STATES.

Brief and Argument in Support of the Foregoing Motion.

WILLIAM L. MOOSE,
Attorney General of State of Arkansas.
HAL L. NORWOOD,
CARUTHERS EWING,
Solicitors for Complainant.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 7, Original.

STATE OF ARKANSAS, COMPLAINANT,

vs.

STATE OF TENNESSEE, DEFENDANT.

MOTION TO HAVE PRINCIPLES SETTLED FOR THE ASCERTAINMENT OF THE BOUNDARY LINE BETWEEN COMPLAINANT AND DEFENDANT AT THE PLACE MENTIONED IN THE COMPLAINANT'S BILL AND FOR THE APPOINTMENT OF A COMMISSION TO ASCERTAIN AND DESIGNATE AT SAID PLACE THE BOUNDARY LINE BEWEEN THE TWO STATES.

Now comes the complainant, the State of Arkansas, and without setting this cause for hearing on bill and answer but because of the request of both parties hereto, as contained in the original bill filed by the State of Arkansas and the answer filed by the State of Tennessee, moves the Court:

I.

On the facts alleged in complainant's bill and admitted in defendant's answer, to settle the principles by which the boundary line between complainant and

defendant is to be ascertained at the place mentioned in complainant's bill and more particularly described as the point beginning about Pecan Point in the State of Arkansas and ending at or near Island No. 34, being that territory affected by what is known as the Cut-Off of 1876, or "Centennial Cut-Off."

II.

On the averments of the bill and prayer for relief in that behalf and on the statements in the answer in the nature of a request, that the Court appoint a Commission to ascertain and designate at the place mentioned and described in the bill the boundary line between the two States and that such Commission be required to make the proper examination and to delineate on maps prepared for that purpose the true line according to the principles announced and declared by this Court, so that said boundaray line may be ascertained, determined and properly marked.

III.

And complainant moves the Court for all orders and decrees that may be meet and proper in the premises.

THE STATE OF ARKANSAS.

By Attorney General.

HAL L. NORWOOD,

CARUTHERS EWING,

Solicitors for Complainant.

BRIEF AND ARGUMENT IN SUPPORT OF THE FOREGOING MOTION

INDEX.

Argument 21

Arkansas' Eastern boundary 9

Avulsion, effect of 32

Boundary line discussed 21

Channel made by cut-off 11

Conflict in opinion of Tennessee Court 33

Course of river before cut-off 10

Cut-off described 10

Effect of judgment in other cases 52

Middle of Main Channel--equidistant between banks 22

Preamble to resolution adopted by Tennessee Legislature 58

Propositions of Law 13

Questions to be Settled 8

Recession of the Waters 35

Reliction 36, 47

River of 1823 10

Tennessee's Claim in answer filed 37

Tennessee's Legislative Claim 58

Tennessee's State Decision 33

Tennessee's Western Boundary 9

CASES CITED.

Acts of Tennessee (1903) Chap., 420 58
Angell on Water Courses 17
Boorman vs. Sunnuchs, 42 Wis., 233 18
Bouvier vs. Stricklett, 40 Neb., 793 .....16. 17
Buttenuth vs. St. L. Bridge Co., 123 Ill., 535 15
Carr vs. Moore (Ia.) 93 N. W. R., 52.....18
Cessill vs. State, 40 Ark., 501 59
Christy vs. Scott, 14 How., 282, 292 56
Collins vs. State, 3 Tex. App., 323 17
Cooley vs. Golden, 52 Mo. App., 229 .....15, 17
Coulthard vs. McIntosh, 143 Ia., 389 16
County of Morgan vs. Allen, 103 U. S., 498 53
Cox vs. Arnold, 129 Mo., 337 .....18, 48
Deloney vs. State, 88 Ark., 311 17
Doolan vs. Carr, 125 U. S., 618, 629 56
Dubar vs. Green, 198 U. S., 166 56
Dull vs. Blackman, 169 U. S., 243 54
Farnham on Waters and Water Rights...18, 19, 47, 50
Filhiol vs. Torney, 194 U. S., 356 56
Florida vs. Georgia, 17 How., 478 .....20, 57
Flynn vs. Boston, 153 Mass., 327 15
Foster vs. Wright, 4 L. R. Com. P., 438 .....19, 50
Fowler vs. Lindsey, 3 Dall., 411 52
Fowler vs. Wood, (Kan.) 85 Pac. R., 763 ....15, 16, 17

Fulton vs. New York, 200 N. Y., 411 19
Fussell vs. Gregg, 113 U. S., 550 56
Hagan vs. Campbell (Ala.), 8 Porter 9 19
Hammond vs. Shepard, 186 Ill., 235 ..... 18, 48
Handly's Lessee vs. Anthony, 5 Wheat., 374 .....14, 25
Harding vs. Jordan, 140 U. S., 382 44
Hodges vs Williams, 95 N. C., 331 .....18, 51
Hughes vs. Birney's Heirs, 107 La., 664 43
Humes vs. Scruggs, 94 U. S., 22 54
I. C. R. R. Co. vs. Ill., 146 U. S., 387 19
Iowa vs. Illinois, 147 U. S., 1 .....13, 14, 24
Iowa vs. Illinois, 151 U. S., 238 8
Iowa vs. Illinois, 202 U. S., 59 30
Jones vs. Johnston, 18 How., 150 17
Jones vs. Soulard, 24 How., 41 .....14, 27
Keokuk & H. Bridge Co. vs. Illinois, 175 U. S.,626 ..
....14, 25, 30
Livingston Co. vs. Darlington, 101 U. S., 407 53
Lockhart vs. Johnson, 181 U. S., 516, 529 56
Louisiana vs. Mississippi, 202 U. S., 1 .....14, 30
Lynch vs. Allen (N. C.) 4 Dev. & Bat., 62 16
Maryland vs. West Virginia, 217 U. S., 577 13
Mayor of Carlisle vs. Graham, 4 L. R.(Ex.) 360 19
McBride vs. Steinweden, 72 Kan., 508 15
McCormick vs. Hayes, 159 U. S., 332 56
McGuire vs. Blount, 199 U. S., 142 56
Min. Ass'n. vs. Canfield, 121 U. S., 295 54
Missouri vs. Iowa, 160 U. S., 668 13
Missouri vs. Kansas, 213 U. S., 78 .....14, 15, 16

Missouri vs. Keane, 84 Mo. App., 127 30
Missouri vs. Kentucky, 11 Wall., 395 28
Missouri vs. Nebraska, 196 U. S., 23.....14, 15, 16
Mitchell vs. Bank, 180 U. S., 471 54
Moore vs. McGuire, 205 U. S., 214 .....14, 25
Morgan vs. Reading, 3 Smedes & M., 366 15
Morris vs. Brooke, 25 Alb. L. J., 90 47
Moss vs. Gibbs, 10 Heis., 283 17
Mulry vs. Norton, 29 Hun., 660 .....18, 19, 42, 50
Mulry vs. Norton, 100 N. Y., 246 41
Mut. Ben. Ins. Co. vs. Tisdale, 91 U. S., 238 244 54
Myers vs. Perry, 1 La. Ann., 372 .....15, 16
Naylor vs. Cox, 114 Mo., 232 18
Nebraska vs. Iowa, 143 U. S., 359 .....15, 16
New Orleans vs. Bank, 167 U. S., 371 54
New Orleans vs. U. S., 10 Pet., 917 19
Niehaus vs. Shepherd, 26 Ohio St., 40 16
Nix vs. Pfeifer, 73 Ark., 199 17
Nor. Pac. R. Co. vs. Slaght, 205 U. S., 122 54
Noyes vs. Collins, (Ia.) 26 L. R. A., 609 18
Panker vs. Canter, 62 Kan., 363 17
People vs. Jessup, 160 N. Y., 249 19
Peck vs. State, 137 N. Y., 372 54
Perkins vs. Adams, 132 Mo., 131 18
Pollard's Lessee vs. Hagan, 3 How., 212 19
Railway Co. vs. Ramsey, 53 Ark., 314 .....17, 19
Rees vs. McDaniel, 115 Mo., 145 .....15, 16
Rober vs. Michelson (Neb.) 116 N. W. R., 949 ....15, 16
Sapp vs. Frazier, 51 La. Ann., 1718 .....18, 48

Schools vs. Risley, 10 Wall., 91 28
State vs. Bowen, 149 Wis., 203 16
State vs. Keane, 84 Mo. App., 127 15
State vs. Pulp Co., 119 Tenn., 47.....27, 33, 54
Steele vs. Sanchez, 72 Ia., 65 19
St. Jos. & G. I. R. R. Co. vs. Devereux, 41 Fed., 15 15
St. Louis vs. Rutz, 138 U. S., 226 .....14, 15, 16
Stockley vs. Cissna, 119 Fed., 812 .....35, 46, 55
Stone vs. Towne, 91 U. S., 341 53
Swayze vs. Burke, 12 Pet., 11 56
U. S. vs. Lee, 106 U. S., 196 53
Virginia vs. West Virginia, 11 Wall., 39 57
Vogelsmeier vs. Prendergast, 137 Mo., 271 18
Wallace vs. Driver, 61 Ark., 429 .....16, 17, 49
Warren vs. Chambers, 25 Ark., 120 17
Washington vs. Oregon, 211 U. S., 127 .....14, 30
Washington vs. Oregon, 214 U. S., 205 .....14, 15
Weber vs. Harbor Com., 18 Wall., 57 57
Welles vs. Bailey, 55 Conn., 292 .....18, 49
Whiteside vs. Norton, 205 Fed., 5 .....15, 16
Whitney vs. U. S., 167 U. S., 529 54
Wilson vs. Shiveley, 11 Ore., 215 .....18, 50
Wilson vs. Watson (Ky.) 138 S. W. R., 282 .....18, 49
Woodbury vs. Short, 17 Vt., 387 17

IN THE

SUPREME COURT OF THE UNITED STATES

No. 7, Original.

STATE OF ARKANSAS, COMPLAINANT,

vs.

STATE OF TENNESSEE, DEFENDANT.

BRIEF AND ARGUMENT FOR THE STATE OF ARKANSAS ON MOTION TO HAVE PRINCIPLES SETTLED FOR THE ASCERTAINMENT OF THE BOUNDARY LINE BETWEEN COMPLAINANT AND DEFENDANT AND FOR THE APPOINTMENT OF A COMMISSION TO ASCERTAIN AND DESIGNATE SAID LINE.

STATEMENT OF THE CASE AS PRESENTED BY THE PLEADINGS.

The State of Arkansas, in her original bill (*page* 5) averred that, by avulsion, on March 7th, 1876, the Mississippi River abandoned its then bed at and along the place mentioned in the bill and made for itself a new channel and this averment is admitted by the State of Tennessee to be true.

Answer, page 4.

The State of Arkansas, in her original bill (*page* 5) averred that since Tennessee and Arkansas were ad-

mitted into the Union and prior to 1876, many changes had occurred in the course and current of the river, specifying the more marked and material ones, and this averment, to a limited extent, is admitted by the State of Tennessee to be true (*Answer, page* 6) but it is denied that all of the changes, as averred, had taken place.

The State of Arkansas likewise averred that the "Centennial Cut-Off," i. e., the avulsion of 1876, left the boundary line between the two states exactly as and where it was immediately preceding said avulsion (*page* 6) and this averment may be considered as a statement of a legal proposition rather than of fact. However, the State of Tennessee admits the averment but, insists that "when the waters disappeared therefrom (because of the avulsion) the lands formerly submerged and covered by the river belonged, wherever the lands could be identified, to the original owners."

Answer, page 6.

The State of Arkansas insists, by her bill, that the line between the two States is "the center of the main channel" of the Mississippi River as it flowed just before the avulsion, (*page* 7), whereas, the State of Tennessee insists that the line between the two States is a line equidistant between the banks of the river, without regard to the location of the main channel of the said river.

Answer, page 9.

Therefore, on the pleadings, this court can determine the principles to govern the location or running of the line and leave to the Commission to be appointed the ascertainment of said line, in accordance with the decree of the Court.

Both States concede the necessity for the ascertainment and location or delineation of said line and ask that a Commission be appointed.

Original bill, page 10.
Answer, pages 16-17.

The settlement of the principles, to control the running of the line will materially affect the extent and nature of the proof to be offered, in that, if the insistences of the State of Arkansas are sustained, the location of the line is a simple matter, whereas, if the insistences of the State of Tennessee are sustained much proof will be required with respect to accretions or the lack thereof, and all of this evidence may be immaterial according as this Court holds one way or the other.

These considerations impel the State of Arkansas to invoke, by motion, the settling of the principles to control the location of the line, and to have a Commission appointed to run the line in harmony with the rules announced and directions given by this Court. This simplifies the proceeding and reduces to a large extent the cost and expense thereof, and eliminates the necessity for taking a vast amount of proof, which, when taken, may be wholly immaterial.

And the State of Arkansas, by making this motion, expressly disclaims a purpose to set this case for hearing on bill and answer, in the knowledge that with respect to so important a matter as the settling of the territorial limits of two sovereign States, the Court will proceed with circumspection and deliberation, rather than hold the parties to any technical rules of practice.

Iowa vs. Illinois, 151 U. S., 238.

There is no evidence which could affect the determination of the following questions that are raised by the two states and the settlement of which, one way or the other, makes comparatively easy the location of the true boundary line:

1. Is the boundary line to be run along the center of the main channel of the Mississippi River as it flowed in 1876, just preceding the "Centennial Cut-Off" (as Arkansas contends), or is it to be so run as to follow a line equidistant between the well defined banks of the stream, irrespective of the location of the main channel (as Tennessee contends)?

2. Did the territorial limits of the States follow the gradual and imperceptible changes made in the course and current of the river, prior to the "Centennial Cut-Off"?

3. Did the Centennial Cut-Off", i. e., the avulsion of 1876, so alter or affect those territorial limits

that the boundary line, as it existed in 1876, was, by the avulsion, pressed back to where it was before the line had been changed by the gradual and imperceptible shiftings of the river?

On examination of the deed of February 25th, 1790, by which North Carolina ceded to the United States that territory which subsequently became the State of Tennessee, it will be found that the western boundary of that territory was described as "*the middle of the Mississippi River.*"

Vol. 1, *American State Papers, Public Land, page* 17.

The western boundary of the State of Tennessee is thus defined by the Legislature of that State:

"The western boundary of the State of Tennessee is *the middle of the stream of the Mississippi River*, including within the State of Tennessee all of such islands as are held under grants from the States of Tennessee and North Carolina."

Code of Tennessee, Shannon, Art. 80.

The State of Arkansas was admitted into the Union on June 23rd, 1836, and the Eastern boundary of said State was declared to be "*the middle of the main channel of the Mississippi River.*"

5 *U. S. Stat. at Large*, 50-51.

In the Arkansas Constitution of 1836, Art. 1, the Eastern boundary of the State was described as *"the middle of the main channel of the Mississippi River."*

While Tennessee was admitted into the Union in 1796, and Arkansas was admitted into the Union in 1836, the court will find in the answer a reference to the river as it run in 1823, and a like reference in an opinion of the Supreme Court of Tennessee (*State vs. Muncie Pulp Co.*, 119 *Tenn.*, 47) and it might be well to explain that the reference to that year (1823) is because of the fact that in 1823 the western territory, that is, the lands lying on the Arkansas side of the river were sectionized and from this sectionizing in that year and from corresponding land lines and marks on the Tennessee shore in that year, the location of the river in 1823 has been made, or at least an attempt has been made to locate the river as it run in that year, but whether it has been correctly located is a matter for the Commission to be appointed, in the event that the Court finds that it is at all material where the river run at that time.

By taking the original bill, the court can readily trace the Cut-Off. Examining the map opposite page 4 of the bill and commencing at the top thereof, it will be found that in 1874 when the reconnoissance was made from which said map was reproduced (being two years before the Cut-Off), the river passed Pecan Point, Ar-

kansas, to the east of that point and flowed practically due south to the southeast corner of Dean's Island, Arkansas, when the river, slightly curving, flowed to the west until it reached the east side of what is marked on the map as "Huddleston 2000 acres" and then flowed in a northwesterly direction, passing immediately south of Island 37, following a westerly course to a point south of "Cottonwood Point". It is proper here to say that in 1823, and doubtless when Arkansas was admitted into the Union, the river did not flow south of Island 37, but at that time flowed to the east and north and west thereof. The channel, as appears on that map, south of Island No. 37, was at that time known as "McKenzie's Chute" and was somewhat differently located, but it appears in red lines on the map. When the river reached "Cottonwood Point", it continued practically south to a point on the map marked "Pacific" and then run a short distance to the east through what is marked on the map and was known as "Devil's Elbow." It then run due north to "Brandywine Bar," thence circled to the east around "Brandywine Bar" and at Bateman Bayou took a southerly course.

In 1876 the river made for itself a new channel known as "Centennial Cut-Off" at a point about, or possibly a little east of Island 36 and west of the tract in red, "Huddleston 2000 acres", washing away the intervening lands and cutting through the place marked "Massey." This resulted in the waters being withdrawn

from old McKenzie's Chute, which had, as above stated, been shifted, as shown on the map, between 1823 and 1876, and likewise caused a withdrawal of the waters from the river bed east, north and west of Island 37 and likewise caused a withdrawal of the waters from the river bed as it run around "Devil's Elbow."

The precise question before the court, therefore, relates to the line between the two States commencing at a point near Island 36 on the Tennessee shore and following the abandoned bed of the river and the sinuosities of the river to a point near "Brandywine Bar."

On the map exhibited with the bill there will be found the land and river lines of 1823 marked in red, which, when compared with the Humphrey map, exhibited with the answer, will show the changes made between 1823 and 1876 in land lines and the location and run of the river. It will be seen that McKenzie's Chute had shifted immediately southwest of Dean's Island, considerably to the north at the southeast corner of Island 37, while it had shifted to the south at the southwest corner of said Island.

The parties hereto agree, as indicated by the bill and answer, that the changes made from 1823 to 1876 were gradual and imperceptible and that the Cut-Off in 1876, whereby the bed of the river was altered, was an avulsion.

The three questions above stated as the matters for determination at this time can, with this explanation, be readily understood by the Court.

PROPOSITIONS OF LAW.

I.

As the original bill and answer request the appointment of a Commission to ascertain and designate the boundary line between the two States, this Court will comply with that request.

Iowa vs. Illinois, 147 U. S., 1.
Missouri vs. Iowa, 160 U. S., 668.

II.

The Commission will be clothed with authority "to adopt all ordinary and legitimate methods in the ascertainment of the true location of said boundary line, including the taking of evidence under oath and calling for papers and documents," preserving and certifying to this Court such evidence, etc.

Maryland vs. West Virginia, 217 U. S., 577, 583.

III.

There is no repugnancy between the boundaries of the two States, as later shown, and it is conceded that if there be a repugnancy between "the middle of the Miss-

issippi River" (Tennessee's western boundary line) and "the middle of the main channel of the Mississippi River" (Arkansas' eastern boundary line), then the former must control, as Congress was, in 1836, when Arkansas was admitted into the Union, without power to change the territorial limits of Tennessee as fixed in 1796.

Louisiana vs. Mississippi, 202, U. S. 1, 40.

IV.

"The middle of the Mississippi River", (description of Tennessee's western boundary line) and "the middle of the main channel of the Mississippi River" (description of Arkansas' eastern boundary line) mean the same thing, to-wit, the *Thalweg*, the channel of navigation, the deep water channel.

Handly's Lessee vs. Anthony, 5 *Wheat.*, 374.
Jones vs. Soulard, 24 *How.*, 41.
St. Louis vs. Rutz, 138 *U. S.*, 226, 249.
Iowa vs. Illinois, 147 U. S., 1, 8.
Keokuk & Hamilton Bridge Co., vs Illinois, 175 U. S., 626, 631.
Missouri vs. Nebraska, 196 U. S., 23.
Louisiana vs. Mississippi, 202 U. S., 1, 49.
Moore vs. McGuire, 205, U. S., 214.
Washington vs. Oregon, 211 U. S., 127, 134.
Missouri vs. Kansas, 213 U. S., 78.
Washington vs. Oregon, 214 U. S., 205.

St. Joseph & G. I. R. R. Co., vs. Devereux, 41 *Fed.* 14.

Buttenuth vs. St. L. Bridge Co., 123, Ill., 535.

State vs. Keane, 84 Mo., App., 127.

Morgan vs. Reading, 3 *Smedes* & M. 366.

Myers vs. Perry, 1 La. Ann., 372.

Flynn vs. Boston, 153 Mass., 327.

Whiteside vs. Norton, 205 Fed. 5.

McBride vs. Steinweden, 72 Kan., 508.

Cooley vs. Golden, 52 Mo. App., 229.

V.

The boundary line between Arkansas and Tennessee continued to be the middle of the main or deep water channel of the Mississippi River, though it shifted and moved by reason of accretions to one shore or erosions from the other. In other words, though this line gradually and imperceptibly shifted, it remained the boundary line between the two states.

St. Louis vs. Rutz, 138 U. S., 245.

Nebraska vs. Iowa, 143 U. S., 359.

Missouri vs. Nebraska, 196 U. S., 23.

Missouri vs. Kansas, 213 U. S., 78.

Washington vs. Oregon, 214 U. S., 205.

Rees vs. McDaniel, 115 Mo., 145.

Rober vs. Michelson, (Neb.) 116 N. W. R., 949.

Fowler vs. Wood, (Kan.) 85 Pac. R. 763; 6 L. R. A., (N. S.) 162.

Nichaus vs. Shepherd, 26 Ohio St., 40.

Coulthard vs. McIntosh (Ia.), 122 N. W., 233.

Wallace vs. Driver, 61 Ark., 429; 31 L. R. A. 317.

Whiteside vs. Norton, 205 Fed. 5.

State vs. Bowen, 149 Wis., 203, 39 L. R. A., (N. S.), 200.

McBride vs. Steinweden, 72 Kan., 508.

VI.

When the Cut-Off occurred in 1876, and the Mississippi River abandoned the old and made for itself a new bed, the boundary line remained in the middle of the abandoned or deserted river bed.

St. Louis vs. Rutz, 138 U. S., 226, 245.

Nebraska vs. Iowa, 143 U. S., 359.

Missouri vs. Kansas, 213 U. S., 78.

Missouri vs. Nebraska, 196 U. S., 23.

Rees vs. McDaniel, 115 Mo., 145.

Rober vs. Michelson (Neb.), 116 N. W. R., 949.

Fowler vs. Wood (Kan.), 85 Pac., 763, 6 L. R. A (N. S.), 162.

Lynch vs. Allen (N. C.), 4 Dev. & Bat., 62.

Coulthard vs. McIntosh, 143 Ia., 389, 122 N. W. R., 233.

Bouvier vs. Stricklett, 40 Neb., 793.

State vs. Bowen, 149 Wis., 203, 39 L. R. A. (N. S.), 200.

DeLoney vs. State, 88 Ark., 311.

Nix vs. Pfeifer, 73 Ark., 199.

Wallace vs. Driver, 61 Ark., 429.

Railway Co. vs. Ramsey, 53 Ark., 314.

Moss vs. Gibbs, 57 Tenn. (10 Heisk.), 283.

Cooley vs. Golden, 52 Mo. App., 229.

Angell on Water Courses, (97th ed.), Art. 57.

VII.

When the avulsion of 1876 occurred, land, which had been theretofore submerged by the gradual encroachments of the river and had become the river bed, was not restored to the original proprietor on the retirement of the river, because the recession of the water was sudden and visible, not gradual and imperceptible. The doctrine of reliction only applies when land is uncovered gradually and imperceptibly.

Jones vs. Johnston, 18 How., 150, 156.

St. Louis vs. Rutz, 138 U. S., 226.

Warren vs. Chambers, 25 Ark., 120, 91 Am. Dec., 538.

Fowler vs. Wood (Kan.), 85 Pac., 763; 6 L. R. A. (N. S.), 162.

Collins vs. State, 3 Tex. App., 323.

Woodbury vs. Short, 17 Vt., 387.

Bouvier vs. Stricklett, 40 Neb., 793.

Pauker vs. Canter, 62 Kan., 363.

Hammond vs. Shepard, 186 Ill., 235.

Vogelsmeier vs. Prendergast, 137 Mo., 271.

Wallace vs. Driver, 61 Ark., 429; 31 L. R. A., 317.

Noyes vs. Collins (Ia.), 26 L. R. A., 609.

Cox vs. Arnold, 129 Mo., 337.

Sapp vs. Frazier, 51 La. Ann., 1718.

Perkins vs. Adams, 132 Mo., 131.

Naylor vs. Cox, 114 Mo., 232, 243.

Boorman vs. Sunnuchs, 42 Wis., 233, 245.

Carr vs. Moore (Ia.), 93 N. W., 52.

Hodges vs. Williams, 95 N. C., 331; 59 Am. R., 242.

Wilson vs. Watson (Ky.), 138 S. W., 283.

Farnham on Waters and Water Rights, Vol. 1, p. 320; Vol. 3, p. 2490.

VIII.

When a river gradually encroaches on the shore the title of the original owner is lost and the State or sovereign acquires the title to so much of the land as becomes the bed of the river.

Welles vs. Bailey, 55 Conn., 292, 317.

Wilson vs. Shirtley, 11 Ore., 215.

Mulry vs. Norton (N. Y.), 29 Hun., 660.

Hodges vs. Williams, 95 N. C., 331; 59 A. M. R., 242.

Railway vs. Ramsey, 53 Ark., 314.

Steele vs .Sanchez, 72 Ia., 65.

Foster vs. Wright, L. R. Com. Pleas Div., Vol. 4, p. 438, 446.

Mayor of Carlisle vs. Graham, Court of Exchequer, 4 L. R., 360.

Farnham on Water and Water Rights, Vol. 1, p. 332.

IX.

The title to the bed of a navigable river is in the State, except where the river suddenly abandons its regular channel and makes a new one. In the latter event, the title of the owner of the suddenly submerged land remains unaffected and, if the river ever leaves his land, he is entitled to assert his right thereto.

New Orleans vs. United States, 10 Pet., 917.

Pollard, Lessee, vs. Hagan, 3 How., 212.

Weber vs. Harbor Commissioners, 18 *Wall.*, 57

I. C. R. R. vs. Illinois, 146 U. S., 387, 435.

Fulton, etc., Co. vs. New York, 200 N. Y., 411.

People, ex rel. vs. Jessup, 160 N. Y., 249, 256.

Mulry vs. Norton, 29 Hun., 660.

Hagan vs. Campbell (Ala.), 8 Porter 9; 33 Am. Dec., 267.

Mayor of Carlisle vs. Graham, Court of Exchequer, 4 L. R., 360.

(In the last cited case will be found a lucid statement of the rights of the owner of land suddenly covered by the waters of a river.)

X.

This court is not concerned with titles, but simply fixes the boundary lines between the States, and claimants of land may, at their pleasure, assert their rights in a proper forum. The boundary line, as declared by this court, must be accepted by all the world.

Florida vs Georgia, 58 U. S., 478.

ARGUMENT.

With respect to the *first* and *second propositions* of law advanced above, we have only to say that they relate to matters of procedure or practice. It seems idle for the parties to take extensive proof with respect to land and river lines as they existed in any one year or the other, when such proof, under the law, may be wholly immaterial, and for that reason we have assumed on this hearing that the court will fix the principles to control the location of the boundary lines to the end that the proof, if any is required, may be addressed to material matters.

With respect to the *third proposition* of law above stated, the concession made by the State of Arkansas as to the absence of power in Congress in the year 1836 to alter the boundary line of Tennessee as theretofore fixed, to-wit: in 1796, eliminates that question from the field of debate.

The *fourth proposition* of law advanced by the State of Arkansas is that the boundary line between the two States is the middle of the navigable or deep water channel of the Mississippi River rather than a line drawn at or along a place equidistant between the well defined banks of the River.

If we are correct in believing that there is no repugnancy between the Acts admitting Tennessee and Arkansas into the Union and that the true boundary between the States is "the middle of the main channel of the Mississippi River," shall the line be run along "the middle of the main channel" or at a place which would represent a line equidistant between the banks, without regard to the main channel?

By running the line along the middle of the main channel no injustice could or would be done either State. For instance, the main channel of the river was against or next the Tennessee bank to the east, south and west of Dean's Island, as will appear from the map exhibited with complaintant's bill, and as will also appear from the map exhibited with defendant's answer. The sharp curve of the river, as it runs south, on the east side o' Dean's Island, and about the said Island, running north on the west side of said Island, indicates that the main channel of the River "hugged" the Tennessee shore as it went around Dean's Island. Yet, as the river run north and to the east of Island No. 37, it "hugged" the Arkansas shore, and thus what Tennessee vould lose at one point, it would gain at another. However, it is unimportant that one State would lose or the other gain by running the line along the center of the main channel of the river, so far as the legal principle is concerned.

To run the line along the center of the main channel, that is, the channel of commerce, is the only feasible and practicable way to run the line. If the line were to be run midway between the well defined banks of the river, the result would be that when running the line where islands were encountered a part of an island would be in one State and a part in another State. There are no islands in the main or navigable channel of the river. An island is on one side or the other of the main channel. An island is, therefore, in one State or the other. If the line is run as the State of Tennessee says it should be run, it could only be so run where no islands were encountered, and where islands were encountered, there would have to be a sudden and irregular shift so as to pass on one side or the other of such islands. Certainly, between the well defined banks of the river there are many islands. These islands may or may not be entirely on one side of a line run equidistant between the well defined banks. If entirely on one side of such line, no difficulty would be encountered. If not entirely on one side of such line, the manner of running the line would have to be altered so as to follow the main channel of the river and leave the island, as it should be left, within one State or the other, or the line would have to cross the island, leaving part of it in one State and part in another. The difficulties in the way of and the confusion that would follow running the

line midway between banks as they relate to dealing with islands, must readily occur to the Court.

Islands are regarded as appendages to either bank.

Iowa vs. Illinois, 147 U. S., 1, 9.

And it is plain that Congress intended that islands in the river should lie wholly in one State or in the other. As the middle of the main channel must flow on one side or the other of an island, the language of this court in *St. Louis vs. Rutz*, 138 U. S., 226, 249, is peculiarly apt:

"It follows that an island in the Mississippi River in its course between Illinois and Missouri must lie wholly in one of those States or the other, because the main channel of the river must run on one side or the other of such islands."

If Arkansas is in error in her insistence that the boundary line follows the main or navigable channel of the river, then Island No. 37 was partially within the State of Arkansas and partially within the State of Tennessee, for in 1823 McKenzie's Chute was a part of the river, though at that time not the main channel. It was a part of the river, however, and the waters of the river flowed on both sides of that island, yet it has never been contended that Island No. 37, or any part of it, was in Arkansas. It has always been recognized and treated as being in Tennessee, and it could only be

in Tennessee on the idea that the boundary line followed the main or navigable channel of the river.

Independent of the embarrassment that would attend an effort to run the line midway between well defined banks in the matter of placing islands as they should be placed—wholly within the jurisdiction of the one State or the other—it is insisted that a correct interpretation of the Acts admitting the two States into the Union requires that the line be run along the center of the main channel of the river and that by "main channel" is meant the channel of navigation,—*the deep water channel.*

Handlys' Lessee vs. Anthony, 5 Wheat., 374.
Iowa vs. Illinois, 147 U. S., 1.
Missouri vs. Nebraska, 196 U. S., 23.
Louisiana vs. Mississippi, 202 U. S., 1, 49.
Moore vs. McGuire, 205 U. S., 214.
Washington vs. Oregon, 211 U. S., 127.
Washington vs. Oregon, 214 U. S., 205.

The tortuous course of the Mississippi River, producing on one side thereof a sloping bank, on which sand bars form, throwing the main channel or channel of navigation along the other bank, makes it essential, if each State is to have preserved to it an interest in the navigation of the river, that the line be run as in-

sisted by the State of Arkansas, or as was well said by Mr. Justice Field, in *Iowa vs. Illinois, supra:*

"When a navigable river constitutes the boundary between two independent States, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each State in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. It is, therefore, laid down in all the recognized treatises on international law of modern times that the middle of the channel of the stream marks the true boundary between the adjoining States up to which each State will on its side exercise jurisdiction. In international law, therefore, and by the usage of European nations, the term 'middle of the stream,' as applied to a navigable river, is the same as the middle of the channel of such stream, and in that sense the terms are used in the treaty of peace between Great Britain, France and Spain, concluded at Paris in 1763. By the language, 'a line drawn along the middle of the river Mississippi from its source to the river Iberville,' as there used, is meant along the middle of the channel of the river Mississippi."

Or as Mr. Chief Justice Fuller said in *Louisiana vs. Mississippi, supra*:

"The term '*thalweg*' is commonly used by writers on international laws in definition of water boundaries between States, meaning the middle or deepest or most navigable channel. And, while often styled 'fairway' or 'midway' or 'main channel' the word itself has been taken over into various languages. Thus in the treaty of Luneville, February 9, 1801, we find '*le Thalweg de l'Adige*,' '*le Thalweg du Rhin*,' and it is similarly used in English treaties and decisions, and the books of publicists in every tongue."

And in the case from which the above quotation is taken, *Iowa vs. Illinois, supra*, is approved.

As already stated, in *Iowa vs. Illinois*, 147 U. S., 1, it was held that "when a navigable river constitutes the boundary line between two independent States, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream." It was also held in said case that the terms "middle of the Mississippi River" and "middle of the main channel of the Mississippi River" and "the centre of the main channel of that river" were synonymous.

This holding we believe to be correct though the Supreme Court of Tennessee said of that case in *State vs. Pulp Co.*, 119 Tenn., 47, at page 88:

"This case is in direct conflict with the previous cases of *Missouri vs. Kentucky*, *St. Louis vs. Rutz*, *Jones vs. Soulard*, *St. Louis Public Schools vs. Risley*, and *Nebraska vs. Iowa*, cited above, which involved practically the same question, and the first four construed the same treaties and Acts of Congress. They are not differentiated, overruled or even referred to in the case of *Iowa vs. Illinois*. We are better satisfied with the reasoning of these cases than we are with that of the last one, and prefer to follow them."

Our effort will be (1) to show that *Iowa vs. Illinois* is not in conflict with the cases mentioned and (2) that said case has been followed and approved by this Court and is to be treated as settled law.

Jones vs. Soulard, 24 How., 41, the earliest of the cited cases, decided in 1860, involved the question whether a grant of land, bounded by a fresh water river,

where the expressions designating the water line are general, conferred proprietorship "to the middle thread of the stream." The calls for boundary in the charter of St. Louis were "to the Mississippi; from thence by the Mississippi," and the argument was that these calls limited the boundary to the bank of the channel, rather than carried same "to the middle thread of the Mississippi River." The Court declined to sustain this insistence.

The Schools vs. Risley, 10 Wall., 91, the next of the cases, decided in 1869, involved the question whether a street or tow path, for the public use, existed between a certain parcel of land and the river, when St. Louis was founded and laid out, as determining whether the owner of said lot was a riparian owner. It was essentially a question of fact.

Missouri vs. Kentucky, 11 Wall., 395, (decided in 1870), was a suit to ascertain and establish the line between the two States at a point on the Mississippi River, known as Wolf Island. The location of the main channel of the river, whether east of the island, when the boundary between the States was fixed, was the subject of investigation. We can find nothing in the case repugnant to the principles announced in *Iowa vs. Illinois*.

St. Louis vs. Rutz, 138 U. S., 226, involved the question whether the land in dispute was "a part of

surveys 149 to 156 inclusive, in the common field of Prairie du Pont, with the accretion thereto" or whether it was an accretion to, and part of, an island called "Arsenal" or "Quarantine Island." The Court, declining to review findings of fact, decided (1) that whether the title of a riparian proprietor went "to the middle thread of the stream or only to the waters' edge" was governed by the law of the State, (2) that if the bed of a stream changes imperceptibly; etc., the line of the land bordering on it changes with it, (3) that if the change is by reason of a freshet and occurs suddenly, the line remains as it was originally, and (4) that the middle of the main channel of the Mississippi River was the line between Illinois and Missouri.

Nebraska vs. Iowa, 143 U. S., 359, announced the well settled rule that when a boundary stream changes and shifts gradually and imprecceptibly the line follows such changes but when the stream suddenly abandons its bed and seeks a new course, the line remains in the abandoned channel; and that these principles applied to the Missouri river.

So that, as we interpret them, no one of the cases said by the Supreme Court of Tennessee to be in conflict with *Iowa vs. Illinois* is repugnant thereto.

And the rule announced in *Iowa vs. Illinois* has been repeatedly declared by this Court to be the correct